



SEN. GEORGE RUNNER (RET.)

MEMBER
STATE BOARD OF EQUALIZATION
CALIFORNIA'S TAX BOARD

April 26, 2013

The Honorable Ted Lieu
California State Senate
State Capitol
Sacramento, CA 95814

Re: SUPPORT for SB 209 (Lieu)

Dear Senator Lieu:

I am writing in strong support of SB 209, which would protect California small businesses from retroactive taxes while preserving the rule of law and implementing the *Cutler* decision relating to "qualified small business stock."

In *Cutler v. Franchise Tax Board*, the Second District Court of Appeal found unconstitutional the qualified small business stock exclusion. The court held that the exclusion discriminated against non-California corporations in violation of the commerce clause because they could not also claim the exclusion. In its decision, however, the court did not direct California to seek back taxes from those who had claimed the exclusion in prior years. That determination was made solely by FTB.

As you are aware, the Board of Equalization serves as the final arbiter of FTB appeals. In this important capacity, BOE interprets and applies the state's franchise and income tax laws. Without a legislative remedy, I anticipate a significant number of appeals from taxpayers protesting the unfairness of FTB's retroactive assessments. Once these appeals are denied at the FTB protest level, they will come before the Board of Equalization, creating additional cost and workload for BOE.

Thank you for introducing this important measure.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Runner".

GEORGE RUNNER
Second District